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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,311	10/11/2005	Hisao Kuroda	263364US0PCT	6731

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EXAMINER	
SRIVASTAVA, KAILASH C	

ART UNIT	PAPER NUMBER
1657	

NOTIFICATION DATE	DELIVERY MODE
10/09/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/517,311	KURODA ET AL.	
	Examiner	Art Unit	
	Dr. Kailash C. Srivastava	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-4* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

General Informal Matters

1. Note that the correct Serial Number of the instant Non-Provisional Application under prosecution at the United States Patent and Trademark Office (i.e., USPTO) is 10/517,311. Please ensure that the correct U.S. Serial Number (i.e., 10/517,311) for the instant application is cited in all future correspondence with this Office.

2. The assigned Art Unit location for the instant application (i.e., 10/517,311) at the USPTO is 1657. To aid in correlating any papers for the instant application (i.e., 10/517,311), all further correspondence for the instant application (i.e., 10/517,311) should be directed to Art Unit 1657.

3. The assigned Examiner for the instant application (i.e., 10/517,311) under prosecution at the USPTO is Dr. Kailash C. Srivastava. To aid in correlating any papers for the instant application (i.e., 10/517,311), all further correspondence regarding the instant application should be directed to Examiner Kailash C. Srivastava in Art Unit 1657.

Claims Status

4. Claims 1- 4 are currently pending.

Election /Restriction

5. This application contains the following groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Restriction to one of the following inventions is required under 35 U.S.C. §121 and §372.

- Group I, consisting of claims 1-3, drawn to a method to screen for malt.
- Group II, consisting of claim 4, drawn to a method to produce a malt-based sparkling beverage.

Inventions are Independent or Distinct

6. The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical features of each one of the inventive groups described *supra* is as follows:

- invention in group I is to screen for malt by evaluating either the activity of fatty acid hydroperoxide lyase by measuring either the degradation products of fatty acid hydroperoxides, or by measuring decreased amounts of fatty acid hydroperoxides by said hydroperoxide lyase;

- Group II invention is specific to preparing a malt-based sparkling beverage.

Thus, none of the inventions in Groups I-II share the same or similar technical feature/ characteristics of invention in one of the other inventive groups. Furthermore, the steps in each of the inventive methods are entirely different than those applied for other. Additionally, the invention of Group I, i.e., that of detecting activity of fatty acid hydroperoxide lyase in germinating seeds (i.e., malting) is already known in the prior art, e.g., by Olias et al (1990. Fatty Acid Hydroperoxide Lyase in Germinating Soybean Seedlings. Journal of Agriculture and Food Chemistry, Volume 38, Number 3, Pages 624-630).

The expression, "special Technical Feature" refers to those features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Thus, a feature found in the prior art can not be considered to be a special technical feature despite the fact that in the case in point, Olias et al. applied the technique only to measure the activity of fatty acid hydroperoxide lyase. The determination of degree of malting on the basis of activity of fatty acid hydroperoxide lyase in a given grain is an interpretation of the result from the technique of measuring the activity of said fatty acid hydroperoxide lyase. Since no special technical feature exists among the inventions in Groups I-II, there is no unity of invention.

7. Restriction for examination purposes as indicated is proper because all the inventions listed in this action are independent or distinct for the reasons given above, and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

a. the inventions have acquired a separate status in the art in view of their different classification;
b. the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
c. the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
d. the prior art applicable to one invention would not likely be applicable to another invention;

e. the inventions are likely to raise different non-prior art issues under 35 U.S.C. §101 and/or 35 U.S.C. §112, first paragraph.

Applicants are advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 C.F.R. §1.143) **and (ii) identification of the claims encompassing the elected invention**.

8. The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 C.F.R. §1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103(a) of the other invention.

9. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. §1.48(b) and by the fee required under 37 C.F.R. §1.17(I).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dr. Kailash C Srivastava/
Examiner, Art Unit 1657

Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1657
(571) 272-0923

29 September 2008
/David M. Naff/
Primary Examiner, Art Unit 1657